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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE

WRIT PETITION NO.4363 OF 2007

Salim Dastagir Yamakanmardi.....Petitiioner

Versus

The State of Maharashtra & Ors..Respondents

Shri Amit Borkar for the petitioner
Mr. P.D.Dalvi for respondent No.3.
Mr. A.H. Palekar, AGP for respondent Nos. 1 and 2.

CORAM : F.I. REBELLO &
R.M.SAVANT, JJ.
DATED : 20th June, 2007

P.C.

. Rule. Heard forthwith.

2. The petitioner impugns the decision of the committee whereby the Committee has rejected his claim as belonging to O.B.C. community known as "Panari". The Committee records that the petitioner had produced secondary evidence, but there is no entry of caste in the School Register which only shows the petitioner belongs to "Musalman" Community. The claim of the petitioner was rejected. Apart from that the Committee noted that petitioner's brother had obtained a caste certificate which shows that he belongs to Musalman Bagwan. On instructions learned Counsel states that till date the said certificate has not been validated.

3. Our attention is invited by the learned Counsel to the report of Vigillence Cell which shows that the grand father of the petitioner was carrying on the occupation of selling pan. Similarly our attention is invited to two documents one of the year 1937 and the other of the year 1943 which would prima facie indicate that the grand father of the petitioner was carrying on the occupation of selling pan. Persons selling pan are known as belonging to O.B.C. Panari.

. Considering the above in our opinion this would be a

fit case to set aside the impugned order and remit the matter to the Committee to reconsider the matter. It is made clear that the Committee has to bear in mind that in the absence of any documentary evidence it is always open to consider the other evidence. Ultimately the test would be preponderance of evidence at the enquiry. The Government of Maharashtra itself has recognised that many a times persons professing the Muslim faith do not show their castes and as such reliance on documentary evidence may not be justified. These aspects have to be taken into consideration in the absence of caste being shown in the school records. With the above observation the impugned order is set aside and the matter is remanded back to the Committee for deciding afresh the caste claim of the petitioner at any rate not later than six months from today.

. We make it clear that at this stage we do not propose to set aside the order setting aside the election of the petitioner. We are only directing that the Election Commission should not hold bye-election to the said vacancy, till the hearing and final disposal of the matter by the Committee. Rule made absolute accordingly. No order as to costs.

(**F.I.REBELLO**, J)

(**R.M. SAVANT,J)**